

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

In the Matter of the Fair Hearing Request of:

**KEVIN V.,**

Claimant,

vs.

**WESTSIDE REGIONAL CENTER,**

Service Agency.

OAH No. 2009030623

**DECISION**

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on May 14, 2009, at the Westside Regional Center located in Culver City, California.

Claimant, who was not present, was represented by his mother.<sup>1</sup>

Lisa Basiri, M.A., Fair Hearing Coordinator, represented the Westside Regional Center (WRC or Service Agency).

The parties presented the testimonial and documentary evidence described below. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

**ISSUE**

May the Service Agency terminate funding for Claimant's specialized supervision?

**EVIDENCE RELIED UPON**

*Documentary:* Service Agency's exhibits 1-6. Claimant's exhibit A.

*Testimonial:* Claimant's mother.

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<sup>1</sup> Last name initials and family titles are used to protect the privacy of Claimant and his family.

## FACTUAL FINDINGS

### *Parties and Jurisdiction*

1. Claimant is a 16-year-old male who is a consumer of WRC based on his qualifying diagnoses of autism and mild mental retardation.

2. WRC provided funding for Claimant to receive specialized supervision at Mychal's Learning Place (Mychal's) from October of 2008, through March 31, 2009. Claimant's mother requested that the funding be continued thereafter.

3. By a Notice of Proposed Action and cover letter, both dated February 26, 2009, WRC denied the request for continued funding of the specialized supervision.

4. On March 9, 2009, a Fair Hearing Request on Claimant's behalf was submitted to WRC, which requested continued funding of the specialized supervision.

5. On March 16, 2009, the parties held an informal conference to discuss Claimant's Fair Hearing Request, but no resolution of the dispute was reached.

### *Claimant's Background Information*

6. Claimant lives at home with his parents. He has an older sister with whom he is very close. Claimant is described in his most recent Individual Program Plan (IPP) as being non-verbal, but very caring and affectionate. Claimant requires adult supervision at all times.

7. Claimant is a sophomore at a high school of his local school district, where he attends classes Monday through Friday from 8:00 a.m. to 1:45 p.m. Claimant receives special education services at school, including adapted physical education (APE) and speech therapy. His most recent Individualized Education Plan (IEP) generated by his school district confirms that Claimant has substantial delays in his communication and social development, among other areas.

8. Other than the specialized supervision, WRC funds Claimant's family to receive 21 hours per month of respite.

### *Specialized Supervision*

9. WRC funded specialized supervision for Claimant of four hours per day, five days per week. The purpose of funding the service was to provide supervision for Claimant during the after-school hours when both of Claimant's parents were working and therefore unavailable to supervise him.

10. WRC has denied the family's request for continued funding of this service because of a recent change in the employment status of Claimant's mother. At the time that WRC agreed to initiate the funding, Claimant's father was working full-time and his mother was working every weekday in the afternoon. In light of the recent downturn of the economy, the employer of Claimant's mother has reduced her hours so that she now only works Tuesday and Thursday afternoons; she also occasionally works on Saturday. Claimant's mother is now searching for a full-time job.

11. Due to the fact that Claimant's mother is no longer working every day, WRC contends that Claimant is no longer in need of specialized supervision, in that Claimant's mother will be available to care for Claimant. Claimant's mother contends the funding should continue to cover the potential situation of her finding full-time employment again. She also contends that Claimant has benefited from the social interaction with his peers at Mychal's, which she believes has also spurred him on to be more communicative.

12. WRC contends its service standard regarding "Day Care Services" applies to the funding of specialized supervision for Claimant. Pursuant to that service standard, a WRC consumer is eligible for supervision services after regular school hours when an individual resides in a two-parent home and both parents either work or attend a vocational/educational program full-time.

## DISCUSSION

### *Jurisdiction and Burden of Proof*

The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)<sup>2</sup> An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's proposed termination of his service. Jurisdiction in this case was thus established. (Factual Findings 1-5.)

The standard of proof in this case is the preponderance of the evidence, because no law or statute requires otherwise. (Evid. Code, § 115.)

When one seeks government benefits or services, the burden of proof is on him or her. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) However, a regional center seeking to change a service previously provided to a consumer has the burden to demonstrate its decision is correct, because the party asserting a claim or making charges generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789 fn. 9.)

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code, except as otherwise indicated.

In this case, the Service Agency bears the burden of proof. By previously funding the specialized supervision, the Service Agency has established a status quo for those services. It now proposes to change that status quo. (Factual Findings 1-5.)

### *Specialized Supervision*

Section 4512 defines services that can be funded by regional centers as being “specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability . . . .”

Pursuant to section 4648, subdivision (a)(1), regional centers are required to secure services and supports that meet the needs of a consumer specified in his or her IPP. Pursuant to section 4648, subdivision (a)(2), the regional center, in implementing an IPP, shall first consider services and supports in the consumer’s natural community or home. A consumer’s IPP “shall be reviewed and modified by the planning team . . . as necessary, in response to the person’s achievement or changing needs . . . .” (§ 4646.5, subd. (b).)

In this case, Claimant needs constant supervision. The specialized supervision was funded in order to provide supervision for Claimant after school when his parents were working. However, due to a change in her employment situation, Claimant’s mother is now available to supervise Claimant after school on Monday, Wednesday and Friday. Pursuant to section 4648, subdivision (a)(2), the Service Agency is entitled to consider Claimant’s community or home environments for purposes of meeting his needs. Claimant’s mother is now at home some weekdays and therefore she is available to supervise him on those occasions. Because the need has changed, the service should change. This is consistent with section 4646.5, which requires modification of services addressed by a consumer’s IPP when the person’s needs change. However, since Claimant’s parents are still not available to supervise him on Tuesday or Thursday after school, the need for the funding continues for those days. The spirit of the Service Agency’s service standard will not be frustrated by continued funding on those days when both parents are working.

The contention of Claimant’s mother that the specialized supervision funding should continue because it has also provided social and communication benefits to Claimant is not persuasive. It was not established that the specialized supervision was funded to address Claimant’s social or communication delays, as required by section 4648, or that the service provided by Mychal’s is specialized to alleviate such deficits, as required by section 4512.

### LEGAL CONCLUSION

Pursuant to Welfare and Institutions Code sections 4512, 4646.5 and 4648, the Service Agency may reduce funding for Claimant’s specialized supervision from Mychal’s Learning Place to four hours per day for two days per week, to reflect a change in the need for that service. (Factual Findings 1-12 and Discussion.)

### ORDER

Claimant's appeal is granted, in part, and denied, in part, as follows. The Westside Regional Center shall provide funding for Claimant to receive specialized supervision from Mychal's Learning Place four hours per day for two days per week.

DATE: May 21, 2009

\_\_\_\_\_/s/\_\_\_\_\_  
ERIC SAWYER  
Administrative Law Judge  
Office of Administrative Hearings

### **NOTICE**

**This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)**